

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 EMPRESS BEY, 19-CV-1877 (PKC)
4 Plaintiff, United States Courthouse
5 - versus - Brooklyn, New York
6 December 10, 2019
7 ANTOINE, et al, 2:00 p.m.
8 Defendants.

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10 TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT
11 BEFORE THE HONORABLE PAMELA K. CHEN
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

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1 (In open court.)

2 THE COURTROOM DEPUTY: Civil cause for oral
3 argument, docket 19-CV-1877, Bey V. Antoine, et al.

4 State your appearances.

5 MS. BEY: I'm Empress Bey, the claimant.

6 THE COURT: Good afternoon. You can have a seat.

7 MS. DeCASTRO: Good afternoon, your Honor, Maria
8 DeCastro, Corporation Counsel. And with me is Amanda Rolon,
9 she passed the bar but is not admitted. She would like to
10 conduct the conference if your Honor would allow.

11 THE COURT: That's fine.

12 Ms. Bey, can we have maybe your --

13 MS. BEY: I would have my older son take her outside
14 of the courtroom. She won't be quiet. I need to be able to
15 hear.

16 THE COURT: Go ahead and do that.

17 MS. DeCASTRO: Your Honor, if I could be heard on
18 this issue. If all her children can be step out because they
19 could be witnesses.

20 THE COURT: Are you okay with having all four
21 children of your children step outside?

22 MS. BEY: No problem, your Honor.

23 THE COURT: How old is your oldest?

24 MS. BEY: Thirteen.

25 THE COURT: All right, so go ahead.

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1 We're here on the request of the defense to dismiss
2 one of your claims, Ms. Bey. Let me recount for everyone
3 briefly the history in this matter.

4 The plaintiff has brought a number of Section 1983
5 claims against several NYPD officers and ACS workers.
6 Previously I had sua sponte, meaning on my own, dismissed most
7 of the defendants from the amended complaint. That happened
8 back on July 15, 2019. However, I did allow six claims
9 against ten defendants to proceed.

10 As relevant here, I allowed amongst others, a claim
11 of unlawful entry to go forward against six of the defendants.
12 And that relates to an incident that occurred on May 2, 2018.
13 However, as the parties may recall in my decision, I did note
14 in a footnote that because the issue here was whether or not
15 there was a validly signed or issued warrant that permitted
16 the defendants to enter Ms. Bey's home, I indicated that if
17 the defendants located that warrant they could reapply for
18 dismissal, remove for dismissal of that claim relating to the
19 May 2, 2018 unlawful entry. So that's what brings us here
20 today.

21 The defendant has located a warrant relating to that
22 entry; namely, the one on May 2, 2018. It appears to be
23 signed by a Justice of the Supreme Court of New York.

24 MS. BEY: Family Court, your Honor.

25 THE COURT: Family Court, my apologies. And that

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1 Judge is Jacqueline D. Williams and was apparently issued on
2 April 13, 2018, but apparently executed on May 2, 2018. And
3 specifically and amongst other things, it says that agents for
4 the Administration for Children Services --

5 MS. BEY: It's an order to produce, your Honor, this
6 is not a warrant.

7 THE COURT: It does say, ma'am, that they are
8 authorized to enter the above premise to determine if the
9 children are present and to access the home and to proceed
10 thereafter with a child protective investigation.

11 MS. BEY: This --

12 THE COURT: And it extends not only to ACS workers
13 but persons conducting a child protective investigation
14 accompanied by police. So I guess the person conducting a
15 child protective investigation, I presume modifies the staff
16 of ACS, but they can be accompanied by police. And we do have
17 police officers who are named as defendants in this case, and
18 were I believe involved in that May 2, 2018 entry into
19 Ms. Bey's home.

20 Now Ms. Bey, you've produce in response the first
21 page of what appears to be the same exact warrant. And you
22 indicate I believe in handwritten notes that this was the
23 document dropped on your floor or the floor of your living
24 room on May 2.

25 MS. BEY: Right.

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1 THE COURT: You don't, however, include the second
2 page which is part of the defendant's exhibit. It shows the
3 signature, which is the issue in dispute here.

4 MS. BEY: The document that I have here is
5 two-sided. I'm assuming when I made the copy I didn't make it
6 two-sided, which is the reason it didn't show.

7 THE COURT: Hang on. So your copy is signed as
8 well, correct?

9 MS. BEY: Right.

10 THE COURT: By the judge.

11 MS. BEY: Yes.

12 THE COURT: Tell me why it is that that doesn't
13 basically eliminate your claim or provide a basis for
14 dismissing your claim where you say the officers and ACS
15 entered your house unlawfully?

16 MS. BEY: Your Honor, I also presided first of all
17 in Family Court and that day produced this document
18 understates that in section, in part, F it states they have to
19 have a search warrant in order to enter. It specifically says
20 that the law enforcement shall remain with the children if
21 children are believed to be present. If the child protective
22 services investigator has requested lawful --

23 THE COURT: Wait, we have a court reporter. Go
24 slower. Start over again.

25 MS. BEY: In part F of Family Court at 1034 section

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1 two -- before I say that, the basis of my claim was under
2 Fourth Amendment violation. So it started under Fourth
3 Amendment where they have to have a warrant that is supported
4 by officer affirmation. Family Court at part section two,
5 part F, states the law enforcement shall remain where the
6 children are, the child or children are believed to be present
7 if child protective services investigator has requested law
8 enforcement assistance.

9 THE COURT: Stop, stop, stop, stop. I'm pausing you
10 because remember.

11 MS. BEY: I speak so fast.

12 THE COURT: Everybody does. Just pause.

13 Can we have the last sentence read back?

14 (Whereupon, the record was read.)

15 MS. BEY: Provided, however, that the law
16 enforcement may not enter the premise where the child or
17 children are believed to be without a search warrant or a
18 constitutionally based reason.

19 None of my children were screaming or crying. There
20 was no blood at the scene. There was nothing going on but me
21 educating my children because my children are homeschooled.

22 Also I provided another document in a subsequent
23 case, which was filed during this case, that says even if,
24 even if they want to say they had authorization to enter, this
25 document says for the children to be produced at the court and

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1 for authorization to enter the premise, which is the first
2 document they do not have.

3 The first document only says for the children to be
4 presented not at the home but at the Bedford office, where
5 Ms. Antoine works.

6 Furthermore, if I was required to bring the children
7 to the Bedford office, I would have to know that I have to
8 bring them. I had no idea that this happened. I knew nothing
9 about this document at all until they came through my fire
10 escape window and threw it on my floor. I had no opportunity
11 to even produce the children at the office.

12 THE COURT: Uh-huh.

13 MS. BEY: Because I knew nothing about it.

14 Also the Family Court Act sets the precedent that
15 law enforcement can be there but they can't enter without a
16 search warrant from the criminal court. They have to go in
17 front of the criminal court and get that search warrant to
18 enter the home. They had no warrant.

19 When the officer came through the window I said,
20 Excuse me officer, where is your search warrant? He said to
21 me flat out, I don't have to have one. I'm the police.

22 THE COURT: Okay, all right. I understand what your
23 reasoning is, let me hear from the defense.

24 MS. ROLON: Yes, your Honor. It is our
25 understanding that, our argument is there was a signed entry

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1 order and that entry order suffices for the search warrant
2 requirement of the Fourth Amendment. Specifically to the
3 Family Court Act that the plaintiff mentioned, it indicates in
4 Section C that the procedure for issuing an entry order under
5 the Act follows the same guidelines as Section 690 of the
6 Criminal Procedure Act -- Criminal Procedure Law; therefore,
7 establishing the same probable cause standard at least under
8 the Fourth Amendment.

9 THE COURT: All right.

10 MS. ROLON: Also, your Honor, I would like to simply
11 note, under Sutherland that the Family Court entry order is
12 equivalent of a search warrant. As well as under the recent
13 case decided by Southern District of New York Judge Paul
14 Engelmayer, who found that the Family Court entry order is the
15 equivalent and cited the exact language found on the entry
16 order.

17 In the Shaheed case Judge Engelmayer found that the
18 language of the entry order, the exact language in this entry
19 order, was sufficient to also establish it as a search warrant
20 under the Sutherland standard.

21 THE COURT: All right. Sir, are you here for this
22 case?

23 AUDIENCE MEMBER: Yes.

24 THE COURT: Is he with you?

25 MS. BEY: Yes.

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1 THE COURT: Does he want to sit up here with you?

2 MS. BEY: He's fine there, thank you.

3 MS. ROLON: Your Honor, if I may just mention that
4 we would like to know if this person was also a witness.

5 MS. BEY: No.

6 THE COURT: I don't know who this is.

7 MS. BEY: This is --

8 AUDIENCE MEMBER: The minister at the local temple
9 where Sister Empress is a member.

10 THE COURT: Okay.

11 AUDIENCE MEMBER: I'm just observing.

12 THE COURT: When you say witness, what are you
13 contemplating?

14 MS. ROLON: There was a gentleman present.

15 MS. BEY: He's not here.

16 THE COURT: Explain it to me. We don't have any
17 kind of hearing or trial right now, so when you say witness I
18 understand the children may at some point be a witness to some
19 of the events talked about in the complaint, but do you have
20 any concern about this gentleman, a minister or some kind of
21 spiritual leader?

22 MS. ROLON: We just wanted to verify he wasn't the
23 gentleman who was present at the incident.

24 THE COURT: I see, fair enough.

25 Did you want to say anything further?

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1 MS. ROLON: Only to establish that, yes, the warrant
2 we provided and the warrant that Ms. Bey has in her hands at
3 this moment is signed by the judge.

4 THE COURT: Your argument, aside from the case law
5 which you cite appropriately, is that this warrant which is
6 issued by the Family Court provides probable cause as required
7 under the Fourth Amendment to justify the entry into Ms. Bey's
8 home?

9 MS. ROLON: It expressly says so on the Family Court
10 order, there was probable cause to believe that there was an
11 abuse or neglected child in the premise.

12 THE COURT: All right. So Ms. Bey, recognizing that
13 you're not a lawyer but obviously have been able to ably
14 represent yourself this far, the defense is correct that the
15 case law pretty uniformly recognizes that a warrant such as
16 this issued by a Family Court based upon its finding of
17 probable cause and authorizing the entry into a person's home
18 accompanied by police for a particular purpose, here to
19 determine that the children are present and to access the home
20 and to proceed thereafter with the child protective
21 investigation, is recognized as being equivalent to a warrant
22 under the Fourth Amendment; including as you alluded, to a
23 search warrant.

24 So while you're focused on the particular language
25 referring to a search warrant, the law recognizes that some, a

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1 document like this issued by a court of competent jurisdiction
2 does meet that requirement. That's what I have to look at
3 when as now you are trying to sue members of ACS and the
4 police for allegedly violating your Fourth Amendment right.

5 The fact that they were acting pursuant to this
6 warrant, which was issued by the Family Court for Fourth
7 Amendment purposes makes it fine; or therefore, it's not
8 violative of the Fourth Amendment. Do you understand that?

9 MS. BEY: I understand what you're saying, your
10 Honor. But I would also like to put on the record that this
11 case was dismissed prima facie. During that trial the
12 defendant Antoine stated on the record that they did not have
13 authority to enter on May 2, 2018.

14 THE COURT: Who said that?

15 MS. BEY: The child protective services agent,
16 Ms. Josephine Antoine stated on the record that she did not
17 have authority to enter, during the trial. It was dismissed
18 prima facie.

19 THE COURT: Whatever her belief might have been, I'm
20 looking at a warrant that authorized her and the other
21 officers entry into your apartment. So her belief doesn't
22 govern here. But rather this document, which I accept as
23 being authentic since it is the same one that was left with
24 you at the residence. And furthermore, even if the officers
25 mistakenly thought that this was sufficient for Fourth

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1 Amendment purposes, that would entitle them to qualified
2 immunity. There is no reason for them to have known that this
3 didn't authorize their entry into your home because on its
4 face it says they could enter for the particular purpose
5 indicated in the warrant. And that there was probable cause
6 to believe that an abuse or neglected child may be at the
7 premise.

8 MS. BEY: Your Honor --

9 THE COURT: Hang on. Whatever happened with the
10 family law action after that does not undermine the
11 appropriateness for Fourth Amendment purposes of the officers'
12 conduct.

13 Now, I can't remember if you still have some kind of
14 a false arrest claim, or due process, or malicious prosecution
15 claim in this matter relating to what happened after the
16 May 2, 2018 entry. That may still be viable.

17 MS. BEY: The due process was for this part of the
18 claim as well. That's the whole basis of my entire claim,
19 that I never had an opportunity to even be heard. So it was
20 under Fourth and Fifth.

21 Also, I would just like to question the fact that I
22 am showing two different Family Court incidents in two
23 different cases. But I'm showing that one paper, which is
24 from the same court, maybe a different judge, it says clearly
25 on the front of this paper: Authorize investigation to enter

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1 the premise. On the top of this --

2 THE COURT: What document are you holding?

3 MS. BEY: This is the same kind of document which is
4 the one that the defense presented.

5 THE COURT: But a different date.

6 MS. BEY: Different date. And it says on it for the
7 children to be produced at the court and for authorization for
8 entry.

9 THE COURT: Is this the April 16, 2019 --

10 MS. BEY: Document, yes.

11 THE COURT: -- warrant.

12 MS. BEY: My whole thing is that's where my
13 understanding came from, that it had to have that language on
14 the paperwork. Even though it says, this is a -- the
15 specific, the outline of this paperwork, it stayed the same,
16 they don't usually change it.

17 THE COURT: Ms. Bey, the fact that it's different
18 doesn't make it insufficient. It's possible that they changed
19 forms. But the bottom line is, and the only question I have
20 to resolve, is whether or not it satisfies the Fourth
21 Amendment. And the document we're focused on, the one from
22 May 2, 2019, does satisfy the Fourth Amendment; in that it
23 contains a finding of probable cause and an order authorizing
24 the agents of ACS and police officers to enter your home for
25 purposes of determining if children are present.

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1 So I understand exactly what you're saying, those
2 two documents look different, but that in and of itself
3 doesn't make the one we're focused on, the one from May 2
4 relating to May 2, insufficient for Fourth Amendment purposes.
5 Do you understand that?

6 MS. BEY: Somewhat, not really.

7 THE COURT: Right. As I said before, I understand
8 you're not a lawyer and your focus, not inappropriately --

9 MS. BEY: It was not the focus on the fact, because
10 there is a lot of things that occurred that is not inside my
11 complaint. In order for me to bring to the Court and say this
12 is what happened and this is what made me put it in the
13 complaint, it's irrelevant right now. I don't have those
14 documents in front of the Court at the very moment.

15 But this paper that I have here now is actually a
16 four-page document, this is only one page, there were four
17 pages. Before I appeared in court, because all of this
18 happened without a petition being filed in the court, when I
19 arrived at the court and up went to receive copies of this
20 document I received four unsigned copies. The signature did
21 not appear on this document until after May 8, which was the
22 date that the petition actually occurred.

23 So my whole thing was the validity of this document
24 was in question. Right now I can't prove that because I don't
25 have those documents that was printed out from the court at

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1 that very moment.

2 THE COURT: Now you're talking about the April 30,
3 2018 order of Judge Williams?

4 MS. BEY: Right. What I'm saying to the Court now,
5 when my children were removed on May 4, as stated in the
6 complaint, I appeared in the court on May 8. When I appeared
7 in the court on May 8, I went to the court's record room and
8 requested copies of this document. Because this was just
9 thrown -- this is the actual document thrown on the floor.

10 When I received the document it was a four-page
11 document that said application for entry order. The gentleman
12 who works in the court printed out four different copies of
13 this four-page document. And at that time none of them were
14 signed. He was like, this is weird. I said, it is weird to
15 me as well.

16 But then after the case was completely done, I went
17 to request the documents again. That's when it had the
18 signature on it.

19 Then I have another document, which is not this one
20 but another one that has the same Outlook on it with the seal
21 on it. Because I went back to the same location where you
22 request documents from the court.

23 Right now I'm still saying they don't -- I request
24 the validity of this paper because at the time while I was
25 going through this case it wasn't signed. Then the lady

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1 stated that she didn't have the authority. But then later on
2 down the line it's signed and she had authority.

3 This judge didn't handle the case at all. It was
4 handled by Elizabeth Bonnet.

5 THE COURT: Let me ask you a question. A document
6 was dropped on your floor at the time --

7 MS. BEY: This here.

8 THE COURT: Hang on. The May 2 entry. And you said
9 this one here, if you'll hand it up to my Deputy I'd
10 appreciate that.

11 MS. BEY: This is the actual document dropped on the
12 floor.

13 THE COURT: We're going to make a copy of that so
14 the report is clear.

15 And that document that I'm observing, it now has or
16 bears a signature of Jacqueline D. Williams.

17 So on the day that your home was entered, the same
18 exact warrant was provided to you as the defense is producing
19 to me now.

20 MS. BEY: Right, it was thrown on the floor.

21 THE COURT: Yet you're saying there is reason to
22 doubt the authenticity of the document, because when you
23 showed up on May 8 at the courthouse the clerk somehow printed
24 up unsigned copies for you.

25 MS. BEY: Right. I have unsigned copies at home.

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1 But I didn't produce that to the Court before today. I felt
2 like it would be improper to bring that today and say, hey,
3 these are the documents they gave me at court. But I have
4 documents that were not signed on May 8 when I went to that
5 court, those documents were not signed.

6 THE COURT: Let me say this, Ms. Bey. I don't know
7 what to make of whatever you received or have at home. But
8 the bottom line is I have nothing before me that suggests that
9 the warrant that you received on the day in question, and then
10 the warrant that is identical to it, a copy thereof being
11 produced by the defense now, is not authentic. It certainly
12 was at the time it was served on you, signed, or a copy was
13 signed such that the officers who executed it would have
14 believed it to be valid.

15 So at a minimum, those officers would be entitled to
16 qualified immunity believing that they were executing a valid
17 warrant.

18 Further for my purposes even today, I don't have
19 anything before me that suggests it's not authentic. I know
20 you're saying that there may be blank copies that you
21 received, but they are not in the record right now. And this
22 issue was the subject of the proceeding today, and has been
23 the subject of the papers that have been submitted back and
24 forth, and yet you didn't produce it.

25 So like I said, I just don't have anything right now

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1 to cast any doubt on the authenticity of the warrant that was
2 delivered to you or provided to you on May 2 and that is being
3 produced for me now both by you and by the defense. It bears
4 a signature of a judge of the Family Court. It authorizes the
5 entry into your home that did occur on May 2, 2018.

6 So regrettably to you, I have to dismiss the claim
7 relating to the unlawful entry, or the claim alleging unlawful
8 entry against six different defendants in this case. You
9 still have other claims.

10 Let me clarify. With respect to those other claims,
11 or all of the other claims, I had mentioned due process but
12 that claim was dismissed before, and I think appropriately.
13 What I wasn't sure of was whether or not you've been arrested
14 in connection with this entry on May 2, 2018; and apparently
15 you were not. So there are no false arrest claims being made
16 on the basis of that entry into your home.

17 So let me recite my decision so that it's clear upon
18 what basis I'm making it.

19 The first issue is whether or not the defendant
20 officers could rely on the warrant in making the entry on
21 May 2, 2018 and whether their reliance on it violated the
22 Fourth Amendment. I find that the officers were entitled to
23 rely on the warrant. And that further, the warrant authorized
24 entry and satisfied the requirements of the Fourth Amendment.

25 Now, it's been clarified what wasn't clear in the

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1 complaint, that the plaintiff, Ms. Bey herself, received a
2 full copy of the warrant, which bears the signature of Judge
3 Williams. And as I said before, appears to be authentic. So
4 I am incorporating by reference this warrant upon which
5 Ms. Bey has relied in her complaint.

6 As stated by the Second Circuit in Brass V. American
7 Film Technologies Incorporated 987 F.2d 142 at 150, a Second
8 Circuit case from 1993: A Court may refer to documents
9 attached to the complaint as an exhibit or incorporated in it
10 by reference to matters of which judicial notice may be taken.
11 Or to documents either in plaintiffs' possession or of which
12 plaintiffs had knowledge and relied on in bringing suit.

13 So I think that doctrine plainly covers this search
14 warrant, which was referenced by Ms. Bey in her complaint, and
15 obviously forms the core of her unlawful entry claim.

16 Furthermore, stated by the Second Circuit DiFolco V.
17 MSNBC Cable LLC 622 F.3rd 104 at 111, Second Circuit 2010:
18 Where a document is not incorporated by reference, the Court
19 may nevertheless consider it where the complaint relies
20 heavily upon its terms and effect, thereby rendering the
21 document integral to the complaint.

22 Under both doctrines, I find that the warrant dated
23 April 30, 2018, should be and is therefore incorporated in the
24 complaint.

25 Now given that this is a state court order I can

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1 take judicial notice of its existence as supporting the ACS
2 workers' and police officers' reasonable belief that they had
3 probable cause to enter Ms. Bey's home. Additionally, Ms. Bey
4 has admitted she was given at least a portion of this warrant
5 on May 2, 2018. She's now acknowledged that she received the
6 full, two-page document so she had knowledge of it prior to
7 her filing the amended complaint.

8 I find, as I mentioned before, that this document is
9 integral to the complaint since its existence is largely
10 determinative of Ms. Bey's allegations of unlawful entry.

11 Finally, I note that the Second Circuit in DiFalco
12 also cautioned against relying on documents outside the
13 complaint when there is a dispute as to the authenticity or
14 accuracy see of the document. That's from DiFalco 622 F.3rd
15 at 111.

16 Here, however, the plaintiff has not provided any
17 reason for me to believe that this document is inauthentic,
18 and indeed was served upon the plaintiff on May 2, 2018, with
19 a signature as it appears now before me dated April 30, 2018.

20 Ms. Bey stated, but has not corroborated, that she
21 received blank copies from the clerk's office at some point
22 after or I guess on May 8, 2018. I'm not considering that as
23 it's not been established that those copies exist nor had the
24 circumstances for which those copies, assuming they exist
25 giving rise to the production, been explained. I don't find

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1 it undermines what clearly presents to me as an authentic
2 document of which I can take judicial notice; namely, this
3 warrant dated April 30, 2018 authorizing the ACS workers and
4 police officers to enter defendant's home, which they did on
5 May 2, 2018.

6 Now the second issue is whether this Family Court
7 order provides ACS workers and police officers, who are
8 defendants in this case, with probable cause to enter
9 Ms. Bey's home on May 2, 2018. There I find that it did.

10 As the Second Circuit has stated and as the defense
11 has reiterated, in *Southerland V. City of New York*, 680 F.3d
12 127 at 144, in note 15, which is a Second Circuit case from
13 2014, I quote: In child abuse investigations a Family Court
14 order is equivalent to a search warrant for Fourth Amendment
15 purposes.

16 This, Ms. Bey, is the case law that you may not be
17 aware of but that governs here. Here the April 30, 2018,
18 order signed by Judge Williams in the Family Court states
19 that: The Court finds that there is probable cause to believe
20 that an abused or neglected child may be at the premises of
21 plaintiff and therefore authorizes ACS works accompanied by
22 the police to enter plaintiff's home in order to conduct a
23 child protective investigation and to determine if children
24 were present in the home.

25 The order also notes that the police could use force

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1 to enter the home.

2 I realize, Ms. Bey, you complained about the fact
3 that the officers entered through a window. But they were
4 entitled to use force, which could have included breaking down
5 your door. But they did not, rather they came in through an
6 open window.

7 You mentioned a statement by one of the officers
8 that they did need a warrant or because they were --

9 MS. BEY: He stated that, I asked the officer,
10 excuse me, but where is your warrant? He said, I don't need a
11 warrant, we're the police.

12 THE COURT: Right. Regardless of what he said or
13 even what the ACS worker may have said later in the proceeding
14 about their authority to enter or lack thereafter, that's
15 irrelevant. Because in fact, they had the authority by virtue
16 of this Family Court order of April 30, 2018. So those
17 statements are not relevant to my decision, assuming that they
18 were made.

19 Also, as I myself have previously stated in Wilson
20 V. Sessoms-Newton reported at 2017 Westlaw 357-5240 page five
21 on August 17, 2017: Absent exigent circumstances or some
22 other exception, state actors must obtain a warrant before
23 they enter the home to conduct a search or otherwise intrude
24 on individual's legitimate expectation of privacy.

25 As I've indicated before, I'm aware that is the

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1 general standard. However, here I find, as I've said
2 repeatedly, that the Family Court order which is based on a
3 finding of probable cause, satisfies the Fourth Amendment's
4 warrant requirement, and that therefore, the defendants
5 lawfully entered plaintiff's apartment pursuant to the
6 April 30, 2018 order.

7 As I mentioned earlier, I'll reiterate, I also said
8 this in the July 15, 2019 decision I issued, that even
9 assuming for the purpose of this argument that it is not
10 definitively established that the Family Court order is the
11 equivalent of a Fourth Amendment or a warrant for Fourth
12 Amendment purposes, I would find that the defendant officers
13 were nonetheless entitled to qualified immunity or are
14 entitled to qualified immunity on this issue as I mentioned
15 earlier.

16 Ms. Bey, I understand that you're not an attorney,
17 but qualified immunity is a back stop for officers when they
18 act with a reasonable belief in the legality of what they are
19 doing. Where a reasonable officer, the standard is, could
20 disagree with what they did as being illegal -- as being legal
21 or not.

22 As the Second Circuit said in *Cornejo V. Bell* 592
23 F.3d 121 at 128, which is a Second Circuit case from 2010:
24 Qualified immunity shields executive employee, which would
25 include ACS workers from civil liability under Section 1983 if

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1 it was objectively reasonable for them to believe that their
2 acts did not violate these clearly established rights by that.
3 The question here is whether or not they had any reason to
4 believe that their entry pursuant to this warrant violated
5 clearly established Fourth Amendment rights. So I find that
6 even if some for reason this warrant from the Family Court or
7 order from the Family Court isn't the equivalent of a warrant
8 for Fourth Amendment purposes, the officers acted with
9 objective reasonableness in believing that it did and that it
10 authorized their entry into your home.

11 So therefore, the officers cannot be sued for
12 having -- or entitled to qualified immunity and cannot be sued
13 for having engaged in that conduct pursuant to this Family
14 Court warrant.

15 So this means, for all of these reasons that I am
16 dismissing the May 2, 2018 unlawful entry claim against
17 defendant Antoine who is mentioned earlier, defendant Caban
18 Quintero, Toddman, Gellineau, and Epstein.

19 Having dismissed this claim, however, I do note that
20 the following claims still remain in this action: An
21 excessive force and false arrest claims -- I should have said
22 excessive force and false claims against defendant Roke based
23 on events of May 4, 2018.

24 MS. BEY: Excuse me, your Honor. There was a
25 correction to the spelling of the officer's name by the

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1 defendant by corporation counsel. It's now R-O-C-K-E.

2 MS. ROLON: That's correct, your Honor.

3 THE COURT: We'll ask the clerk's office to note
4 that for the record, R-O-C-K-E.

5 A false claim against defendant Mancilla based on
6 the events of May 22, train. And an excessive force and false
7 arrest claims -- excessive force and false arrest claim
8 against defendants Shey and Court Officer 6768 based on the
9 events of October 9, 2018. So those claims are still
10 proceeding.

11 Of the remaining defendants, only defendant Mancilla
12 has been served. And to the extent that I referred to Corp.
13 counsel as defense counsel, I understand that they don't
14 represent at this time the individual defendants, but simply
15 represent -- who do you represent?

16 MS. ROLON: Just the City of New York as an
17 interested party.

18 THE COURT: You said that earlier. Just the City of
19 New York as an interested party.

20 What has to happen next is proper service on all the
21 defendants. If you anticipate that you'll end up representing
22 these individual defendants, is that the product of a lengthy
23 evaluation process?

24 MS. ROLON: There are several decisions that go into
25 making a representation decision. I would like to note to the

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1 Court that we did provide service adjustments for the
2 remaining defendants that we had. That was provided to
3 Ms. Bey by letter on November 26. Only one of which remains
4 after your Honor's decision today.

5 THE COURT: It would be helpful if you file that as
6 well so we have a record of it.

7 MS. ROLON: Certainly.

8 THE COURT: Rather than just your representation.

9 So given that the addresses have been provided,
10 summonses will be completed as to those additional officers
11 and then they will be served.

12 There is one defendant, Court Officer 6768, who
13 appears to be a state official and the Court is currently
14 awaiting more information from the New York State Attorney
15 General's Office on how to serve that defendant. But once the
16 other defendants, city defendants, in addition to Mancilla are
17 served, then the City will determine whether or not they
18 represent them and appearances will be entered. Or if these
19 defendants end up with their own counsel, then hopefully their
20 lawyers will make appearances and we'll go from there.

21 This process, Ms. Bey, may take a little bit of
22 time.

23 MS. BEY: Understood.

24 THE COURT: We now know which claims are going
25 forward. And in a month or two, perhaps over the holiday into

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1 the New Year, the case will proceed on those claims against
2 those defendants who have been properly served.

3 MS. BEY: Yes, ma'am.

4 THE COURT: All right. Anything else to address?

5 MS. ROLON: Yes, your Honor. If I just may add that
6 one of the incidents, the May 22 arrest, we are under the
7 impression it resulted in a conviction. And in plaintiff's
8 complaint she's appealing that conviction. We would like
9 clarification as it may inform our potential motion to stay.

10 THE COURT: You wanted clarification on?

11 MS. ROLON: Whether she's filing an appeal on the
12 convicted arrest.

13 THE COURT: Go ahead.

14 MS. BEY: I apologize. As far as the May 22 event,
15 I am appealing that decision. It was just like your Honor,
16 said I'm not a lawyer. You see I have several cases in front
17 of different courts at one time. So the process ended up like
18 stoped at a point, so I'm still in the process of appealing
19 that decision, as I am still in court with the defendants that
20 gave rise to that arrest. So basically I'm in civil court
21 with the management agency that is involved with that
22 complaint. And that outcome will be used in the appeal for
23 the criminal decision.

24 THE COURT: Let me warn you of one thing. I can't
25 give you any advice. As you probably know, there are time

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limits that apply in appealing a criminal conviction. You have to pay attention to those. You had can't sit on your rights with respect to your appeal. You should be thinking about whether or not you need to notice your appeal in criminal court without waiting.

MS. BEY: I noticed it.

THE COURT: Okay. You did so timely?

MS. BEY: Yes, I did so timely.

THE COURT: For your purposes, the City's purposes that is, Corp. counsel more specifically, you should assume she is appealing that criminal conviction arising out of the May 22, 2018 arrest.

MS. ROLON: Thank you, your Honor.

THE COURT: Thank you all. I appreciate it.

MS. BEY: I want to clarify, since they are putting the letter on the record, I don't have to provide the addresses, correct?

THE COURT: That's correct.

(Whereupon, the matter was concluded.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Rivka Teich, CSR RPR RMR FCRR
Official Court Reporter
Eastern District of New York

Rivka Teich CSR, RPR, RMR, FCRR
Official Court Reporter